

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION No 802 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

SHIRINIBAI BARJORJI KATRAK

Versus

JERSHI KEKSHARU SAHER

Appearance:

MR. BHARAT J. SHELAT, ADVOCATE, for Petitioners
MS KJ BRAHMBHATT for Respondent No. 1

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 15/12/97

ORAL JUDGEMENT

This is a defendant-tenant's revision under Section 29(2) of the Bombay Rent, Hotel and Lodging House Rates Control Act, 1947 (hereinafter referred to as 'the Act') whereby the Assistant Judge, Surat by judgement dated 18.4.1983 dismissed the appeal and upheld the judgement and decree dated 13.7.1981 passed by the Additional Judge, Small Causes Court, Surat for eviction against the defendant.

The plaintiff filed the suit for recovery of possession of the suit premises alleging inter alia that the property was let out only for the purpose of office of legal profession. It is also alleged that the defendant No.1 is the only heir of deceased tenant and she was not taking part in the office of legal profession at the time of death of deceased-tenant. It is further alleged that the defendants No. 2 and 3 were also not doing work of legal profession along with the deceased tenant and therefore the tenancy has not transmitted in favour of defendants Nos. 1,2, and 3 and that they have no right to continue in the premises. The possession was also sought on the ground of change of user. It is alleged that the defendant No.1 has started tuition classes in the suit premises after the death of the deceased original tenant. Possession was also sought on the ground that the suit premises are unlawfully sublet or assigned or transferred to the defendant Nos. 2 to 4 after coming into operation of the Act and also sought the possession on the ground of nuisance and annoyance. Plaintiff also pleaded that he required the suit premises for his reasonable and bona fide need. He has been advised by the Doctors not to undergo any physical strain. Therefore, he cannot stay on the first floor and he is required to stay on the ground floor.

The defendant filed the written statement stating inter alia that at the time of death of original tenant Shri Katrak, defendant No.1, 2 and 3 were residing with him in the suit premises. After the death of original tenant they are entitled to continue in possession as tenant in view of the provisions of Section 5(11)(c)(ii) of the Act. The allegation of change of user has been denied. The allegation of requirement of the premises for personal use has also been denied.

The trial court after framing the issues recorded the evidence and held that premises were let out for the purpose of business only i.e. for the office of legal profession and the premises were not used for the purpose for which it was let out and it was further held that the defendant No. 1, 2 and 3 are not entitled to get tenancy transmitted under the provisions of Section 5(11)(c)(ii) of the Act. The Trial court accordingly decreed the suit. The tenant preferred an appeal against the said judgement and decree which has been dismissed by the judgement of the Assistant Judge dated 18.4.1983. It is contended that premises were taken on monthly rent by Late Shri Katra in the year 1939 for the mixed purpose of business and residence. Son of the original tenant is

doing business in the suit premises, as such the courts below have committed error in not holding that tenancy has transmitted to heirs of Shri Katrak.

In my view there is no substance in the contention. There is a concurrent finding of fact based on oral and documentary evidence that the premises were let out to original tenant Shri Katrak for carrying on legal profession in the suit premises. There is also evidence to show that there was a separate premises of Shri Katrak for residential purpose. The suit premises were exclusively used to legal profession. Sub-section (11) of Section 5 of the the Act provides tenancy under sub-clause (c) in relation to premises for residence and in relation to premises for business separately. In view of this, the legal heirs of Shri Katrak cannot be permitted to continue in the premises which was let out for the purpose of carrying legal profession. In view of the aforesaid, there is no merit in this revision application and the same is accordingly rejected. Rule is discharged. Interim relief vacated.

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